UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/114
22 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 of the provisional agenda

CIVIL AND POLITICAL RIGHTS

Written statement submitted by the International Federation of Journalists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 March 1999]

GE.99-11604 (E)

Introduction

1. When a journalist is killed, the world reacts. It is an attack on the profession, on freedom of expression, on human rights. Outrage can be expressed by stable and emerging democracies alike. However, when journalists are imprisoned, in the name of the law, of justice, or national security, fewer voices are raised by the international community.

2. The range of laws used against the media is very wide, and varies from country to country and region to region. However, certain tendencies prevail and these can and should be examined and condemned by the international community and the United Nations Commission on Human Rights in particular.

3. In this submission the IFJ outlines general concerns in the misuse of defamation laws, denial of access to information, corrupt practices and contempt for the rule of law. These actions ensure that individual journalists may be silenced and they create an atmosphere of repression within the media community. These are practices which are widespread.

4. Genuine freedom of expression is essential, we believe, to the exercise of all other human rights. Unless the following points are taken seriously and acted upon, Governments will feel free to continue to silence their journalists and keep their people in ignorance.

Defamation

5. Contrary to the practice in many States, laws on defamation should not be designed to protect organizations, Governments or other groups. They should exist to protect the individual citizen. They should not be used, although they often are, to stifle criticism of the Government, or exposure of corrupt or illegal practices.

6. Investigative journalism ensures that Governments and private institutions are held accountable for their actions. It is essential in the fight against corruption and in monitoring the performance of the executive. Yet journalists are still sued for defamation even when they have conducted themselves in a responsible and justifiable manner.

7. International courts, including the European Court of Human Rights, have stated that public figures are required to tolerate a higher degree of criticism than private citizens, and yet many countries provide a greater level of protection to public figures, such as the president or prime minister, than to the average person.

8. In order to be defamatory a statement should be untrue, made with malicious intent and cause damage to the reputation of the person defamed. The original burden of proof should lie with the plaintiff and not the defendant. These are principles which ensure that individuals obtain protection and that investigative journalism is not impeded and that legitimate criticism is not stifled.

9. There is no place for defamation laws in the criminal justice system. The offence can be effectively dealt with under the civil code, and is more open to abuse when written into criminal procedure. It does not benefit democracy when journalists are imprisoned for defamation.

10. Where a country is intent on maintaining or creating democratic institutions, criminal defamation is a barrier to this development. It makes it easier for those in power to repress the media. It can be used by Governments to imprison journalists whilst maintaining a veneer of legal respectability.

11. The IFJ therefore:

(a) Asks the United Nations Commission on Human Rights to endorse the principle that defamation laws should only be contained in the civil code;

(b) Recommends that the United Nations Commission on Human Rights endorse the principle that in order to be defamatory a statement must be untrue, made with malicious intent and cause damage to the reputation of the individual concerned.

Access to information

12. Access to information is vital for the journalist to be able to exercise his/her profession. It is also essential for democracy to flourish. Governments can ensure that information is freely provided to journalists and citizens alike; however, problems persist in this field, either because there is no legislation guaranteeing access, or because there is an unwillingness on the part of the authorities to give access, or because of corruption.

13. Journalists from independent media often face problems in receiving information from public authorities who tend to favour the government press. In other instances, journalists are required to pay a public official in order to obtain information that should be freely available. This is not a case of fees for administrative charges, but corruption where public servants will not provide information unless they receive personal payment. These problems accumulate in countries where access to information and corruption are not seriously addressed by either the Government or the international community.

14. A more insidious consequence of the denial to provide access occurs in countries which use their defamation laws and criminal courts to imprison journalists. Governments state that journalists have been irresponsible and have broken the law, and for that reason they need to be punished. However, the same Governments that rail against journalists for biased reporting refuse to provide information, deny access to press briefings to members of the independent media and do not give interviews to independent journalists. Journalists who are trying to cover all sides of the story are prevented from doing so.

15. The IFJ recommends that the United Nations Commission on Human Rights call on all States to ensure that access to information is guaranteed in law and in practice and that penalties are imposed where such access is denied.

Respect for the rule of law and criminal procedure

16. In some countries, journalists may be detained in contravention of national laws which provide for safeguards against illegal detention or provision of bail. In Togo, journalists have been detained on remand beyond

the legal deadline and for longer periods than any possible sentence could impose and in Zimbabwe the refusal of military authorities to obey two High Court orders to release Mark Chavunduka is an obvious case of contempt for the rule of law. In Ethiopia, the Government claims that if journalists are detained beyond the legal limit, this is because the whole criminal justice system is in difficulty, but that the authorities are working to remedy this problem. However, a brief examination of the practice of the courts in relation to journalists suggests that the failing justice system argument is being used as a veil to hide the deliberate extension of detention of journalists.

17. It is clear, therefore, that whilst some countries have liberal and worthy laws on the statute books, the practice ensures that human rights continue to be abused. It is essential that the United Nations monitor not only the existence of good law but also its implementation. Healthy scepticism can only serve to defend human rights.

A special case: Nigeria

18. The IFJ has monitored the recent developments in Nigeria and is currently implementing a large project in that country. The initial signs from the Government since the death of General Abacha have been positive; however, the country is still in a period of change where democratic institutions and practice have not yet taken root.

19. The general information contained in this submission is applicable to various countries and legal systems, many of them more stable than Nigeria. However, Nigeria is in a pivotal position in West Africa, and its stability is essential to stability in the region. The mooted changes have not progressed sufficiently to justify a reduction in international vigilance at this time. A relaxation in the monitoring of Nigeria by the Commission would be very detrimental and would not serve the interests of the people of Nigeria or the international community.

20. The IFJ therefore recommends that the mandate of the Special Rapporteur on Nigeria be maintained.

Conclusion

21. Without a legal framework to guarantee freedom of expression, this fundamental right will always be abused. However, a legal framework in itself is not enough. Even with good laws, journalists can be repressed where the judiciary are not independent, courts are held in contempt, or corruption is rife.

22. In the year following the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, the international community must take action to guarantee the principles and rights that it lauded last year.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/115
24 March 1999

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 17 (b) of the agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement submitted by the International Federation of Human Rights Leagues and the World Organization against Torture, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 March 1999]

1. The World Organization against Torture (OMCT) and the International Federation of Human Rights Leagues (IFHR) have for many years been working for the protection of human rights defenders. In order to contribute to a response to the repression which is increasingly directed at human rights defenders, they decided to establish, in July 1997, on the recommendation of their member organizations around the world, the Observatory for the Protection of Human Rights Defenders, an appropriate protection mechanism developed in partnership with various regional organizations.

2. The Observatory's work is based, on the one hand, on the conviction that reinforcing cooperation and solidarity with human rights defenders and their organizations facing harassment helps to break the isolation in which they find themselves and, on the other hand, on the absolute need for a systematic response from NGOs and the international community to the repression of which the human rights defenders are victims.

3. With this aim in view, the Observatory has set itself the priority of establishing, progressively:

(a) A system to alert the international community to cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention. Urgent appeals are distributed to 90,000 targeted recipients regarded as having the capacity to "react", in particular, intergovernmental and non-governmental organizations, and the national and international media;

(b) Observation of judicial proceedings and, where necessary, direct legal assistance;

(c) Personalized assistance which is as specific as possible, including material assistance, to guarantee the security of human rights defenders who are victims of serious violations;

(d) Preparation, publication and distribution at the international level of reports on violations of the rights and freedoms of persons or organizations working on behalf of human rights throughout the world;

(e) Ongoing work with a range of competent international and regional intergovernmental bodies, notably the United Nations, the Organization of American States, the Organization of African Unity, the Council of Europe and the European Union.

4. In support of its alert and mobilization activities, the Observatory has a unique communications system for human rights defenders who are in danger. It is called the Emergency Line. The Observatory's first annual report was published on 3 December 1998 on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. During its first year of work, the Observatory intervened on behalf of many dozens of human rights defenders who had been made the victims of grave violations in Africa, Latin America, Asia, Europe, North Africa and the Near and Middle East. The report contains, most notably, urgent appeals concerning more than 200 human rights defenders in some 40 countries. It demonstrates the extent, diversity and unprecedented gravity of the repression of human rights defenders all over the world.

5. The violations recorded during the period covered by this first annual report confirm the existence of planned strategies of harassment and repression, which include, in particular, the following practices and measures:

Forced disappearances;

Summary or extrajudicial executions;

Torture and other cruel, inhuman or degrading treatment;

Arbitrary arrests and detentions;

Illegal police investigations and arbitrary interrogations;

Unfair trials;

Judicial sentences based on false accusations, fabricated evidence or statements obtained through torture;

Threats, including death threats, against defenders and/or their families;

Constant surveillance and persecution of the defenders and/or their families;

Physical aggression;

Various kinds of attacks (bombs, incendiary devices, etc.);

Interception of telephone calls;

Illegal home searches;

Illegal office searches;

The destruction or seizure of material, files or personal documents;

Campaigns of defamation and unfounded accusations;

Unfounded dismissals from employment;

Suspension of civil and/or political rights;

Withdrawal, suspension or contesting of the legal status of NGOs;

Seizure of premises or forced expulsion;

Legal banning of NGOs; and

Forced exile or obstacles placed on the freedom of movement.

6. The Observatory has noted that these acts are in most cases attributable to members of the armed forces, the police and the security services, as well as to paramilitary groups which are very often acting with the approval, assistance or protection of the authorities or semi-State entities.

7. In the past two years various United Nations bodies have taken action on behalf of international protection of human rights defenders. On the one hand, the Commission on Human Rights has requested certain special procedures of a geographic and thematic nature to pay particular attention to the cases of human rights defenders. On the other hand, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted for the first time, during its fiftieth session, a resolution on violations of the rights of human rights defenders in all countries, citing individual cases of human rights defenders and requesting the High Commissioner for Human Rights to undertake investigations into the security of these persons. Finally, on 9 December 1998, the General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

8. These advances must be emphasized and the Observatory welcomes, in particular, the adoption of the Declaration. Nevertheless, the advances are still insufficient, as demonstrated by the daily requests to the Observatory to intervene on behalf of human rights defenders in danger. The existing special procedures have so far not been able to fill the gap in the international system of protection of human rights but will remain necessarily limited by the mandate of the procedures, which are far from being able to cover all types of violations to which human rights defenders are subjected. The procedures on behalf of human rights defenders merely underline the need to pool the efforts being made so that the human rights defenders do not receive protection which is dispersed, random and dependent on the category of violations to which they are subjected. The creation of a specific mechanism for the protection of human rights defenders is essential.

9. In view of this, the IFHR, the OMCT and the Observatory call upon the Commission on Human Rights to appoint a special rapporteur on human rights defenders who will have as his mandate:

Seeking and receiving from all credible sources information regarding acts which are injurious to the rights and freedoms of any person exercising his right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at national and international levels;

Submitting any allegation transmitted to him for examination and reacting without delay, requesting clarifications from the Government concerned and informing the Government, the source of the information and the Commission on Human Rights of his conclusions and recommendations regarding the subject in question;

Examining the extent to which national measures and practices are compatible with the provisions of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;

Undertaking visits *in situ* with a view, in particular, to examining the extent to which national legislation and other national provisions and practices are in conformity with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;

Addressing recommendations to Governments on measures to guarantee the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; and

Reporting every year on his activities, including the follow-up to the recommendations he has addressed to States, the Commission on Human Rights and the General Assembly.

10. The OMCT, the IFHR and the Observatory call upon the Commission to support the establishment, within the Office of the High Commissioner for Human Rights, of a department to support the special rapporteur in the implementation of his mandate and to give him assistance in ensuring follow-up to recommendations he has made to Governments.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/116
23 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Agenda item 11 (a)

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: TORTURE AND DETENTION

Written statement submitted by Arab Organization for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 March 1999]

GE.99-11608 (E)

"Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein ..."

1. Abduction in itself is an offence. The sentences pronounced by the Israeli court martial against those kidnapped are not legal, and contradict all international trial standards. And even when these illegal sentences have been served by 19 Lebanese hostages in the Aayloun detention camp, the Israeli Government keeps them detained by renewing their detention period every six months. Some of these hostages have been detained for periods that exceed nine years after the serving of their sentences. Such are the cases of Bilal Dakroub, Ahmad Ammar and others. Even the illegal trials are just formalities. There is no difference between detainees who have been tried, detainees whose sentences have been served, and detainees detained without trial. They are all hostages.

2. The Israeli Supreme Court has confessed, on 4 March 1998, that the Lebanese detainees are actually "hostages for bargain".

3. The legalization of hostage-taking by Israel, and the application of torture accepted by their regime, is a clear violation of all international laws and the first act of its kind in the world. Never in history has a Supreme Court given its blessing to the taking of people as hostages.

4. Some of those kidnapped have not been tried since their abduction. They just sit in cells that are forbidden to the Red Cross, and are not allowed even to write letters to their families (or receive any from them). Such is the case of Abdel Karim Obeid and Mustafa Dirani.

5. In the Nafha detention camp is Samir Kintar, the detainee held for the longest period of time, since 22 April 1979. Mr. Kintar is sentenced to a life in "detention" and is not allowed any visits from his family in spite of the now 20 years' imprisonment.

6. Most of the detainees suffer from some difficult health and psychological conditions. Their families are not allowed to visit them, and they are forced to live in complete isolation from the outside world.

7. The Israelis also hold tens of Lebanese hostage without admitting that they do. The whereabouts of these people are still unknown.

8. The charges against the Lebanese detainees may be summarized as follows:

(a) Underground resistance against the Israeli occupation;

(b) Refusing to join a pro-Israeli militia;

(c) Refusing to pay any levies or taxes;

(d) Cooperating with the Lebanese Government and giving them information;

(e) Not accepting Israeli aid and refusing to take tourist trips to Israel;

(f) Having mobile phones.

9. The Israeli forces hold 183 Lebanese hostages. One hundred and forty hostages are in the Khiam detention camp, and the rest (43 hostages) are in the other camps (Asskalan, Aayloun, Nafha ...). The ages of the detainees range between 14 and 70 years of age. The Khiam detention camp was established in 1985 and since then, has been used for detaining people without any legal documents, no charges or trials, and no right to an attorney.

10. The Israeli forces have direct control over the camp, and the Israeli secret intelligence service conduct the interrogations of the detainees before moving them to a camp. Fourteen detainees have died during these "interrogations". Another two who died in the hospital after their release are Salim Awada and Rida Yousseff Mustafa.

11. Rheumatism, Thalassaemia, loss of memory, eye problems, stomach problems and other health conditions spread quickly in the detention camps due to insufficient nutrition, lack of medical care and the no-light policy applied by the Israeli forces. There are sick and wounded in the camps. Soleiman Ramadan's legs were amputated in an Israeli hospital in 1985 due to medical neglect of his infected wounds.

12. Even children did not escape the camps. Mohamad Kazan (15 years) and Ali Mustafa Tawbeh (14 years, held with his father, Mustafa Tawbeh), are being held. The Israeli forces also hold many old people in detention camps: Ali Ghanwi (60 years old), Mohamad Katbay (64 years old) and Mohamad Hassan Said (70 years old). Also in the camps are women and mothers: Mrs. Fatmeh Abdel Nabi held with her husband, Mr. Mohamad Sayed; Ms. Samira Sharaf El Din; Mrs. Abdeh Malkani, held with her old husband, Mr. Mohamad Hassan Al Sayed; and Mrs. Evon Soidi, also held with her husband, Mr. Paul Abu Zeid.

13. As for those kidnapped and moved from Lebanese territories and tried, this contradicts articles 49 and 76 of the Fourth Geneva Convention. Article 49, paragraph 1, states:

> "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."

14. The Lebanese hostages case in the Israeli detention camps is a national Lebanese cause and an international humanitarian cause, requiring the United Nations, all Governments and the Arab and international humanitarian organizations to undertake a worldwide campaign in the support of the following:

(a) The release of all minors, sick and wounded women, and the elderly from the camps;

(b) The release of all the detainees whose sentences have been served;

(c) The cessation of torture in Khiam detention camp; the cessation of the cruel and inhuman treatment inflicted on the detainees for the purpose of degrading their dignity;

(d) Send an international committee to Khiam detention camp; bring the war criminals who have tortured the detainees, whether directly or indirectly, to the international court; make reparations for the victims and work towards their rehabilitation;

(e) Allow all the detainees to meet with their families, lawyers, the Red Cross and human rights organizations;

(f) Overturn the Israeli Supreme Court decisions that consider the Lebanese detainees as hostages, in open contradiction to the Fourth Geneva Convention;

(g) Cancel the "formality trials" of the detainees and declare these trials as illegitimate according to international law;

(h) Force the Israelis to admit the whereabouts of the missing persons or present their bodies to the Red Cross.

- - - - -

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/117
25 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Agenda item 5

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by International Alert, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 March 1999]

Executive summary and main recommendations

1. Mercenaries fight for financial gain in armed conflicts alien to their own nationality. The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination is a serious concern for the Commission on Human Rights which has become increasingly prevalent and taken on worrying new dimensions in recent years. A lack of political will has meant that the international community has failed to mount an appropriate response that would halt the proliferation of mercenary activity. The following submission pinpoints some of the complex human rights concerns associated with mercenary activity and makes a series of recommendations on how the Commission on Human Rights, and the wider United Nations system, can improve its effectiveness for dealing with the issue. In particular it recommends that:

> The Member States of the United Nations ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries;
>
> The mandate of the Special Rapporteur on the use of mercenaries be extended and the adverse effects of mercenary activity publicized more widely;
>
> The Commission on Human Rights seek to work more closely with the United Nations Crime Prevention and Criminal Justice Division so as to tackle the criminal activities associated with mercenaries at the same time as the human rights concerns.

Mercenaries in the 1990s

2. The use of mercenaries in conflicts is becoming increasingly common in the 1990s because of the security gap left by the international community's continued reluctance to intervene in a growing number of internal conflicts. At the same time, the end of the cold war and associated military cutbacks has left a glut of highly-skilled military personnel keen to continue to use their military skills by fighting in foreign wars. In recent years there has, in addition, been a growth of companies in the international market which have begun to offer security and military services with the use of mercenaries to beleagured Governments and mineral corporations operating in conflict regions. This more sophisticated form of mercenarism does not alter its intrinsic nature, but these new methods help to mask the dangers they present.

3. Mercenaries are now more involved in ongoing armed conflicts than at any time since the 1960s. There have been official reports of mercenary activity (including individual soldiers of fortune and the more sophisticated corporate mercenary groups) in: Kashmir, Afghanistan, Liberia, the former-Zaire, Angola, Congo, the Democratic Republic of the Congo, Sierra Leone, the former Yugoslavia, recent fighting between Eritrea and Ethiopia, and numerous other conflicts around the world. The origins of these mercenaries are to be found in an equally extensive list of countries, from the former Soviet Union, Europe, the Middle East, the Americas and Africa.

The United Nations response to mercenary activity

4. The United Nations General Assembly passed its first resolution 1/ condemning the use of mercenaries in 1968. 2/ Since then, the General Assembly, the Security Council, the Economic and Social Council and the Commission on Human Rights have repeatedly condemned mercenary activity as internationally unlawful and serving to undermine the exercise of the right to self-determination of peoples and the enjoyment of human rights. For these reasons, in 1987, the Commission on Human Rights established the mandate of the Special Rapporteur on the question of the use of mercenaries.

United Nations Convention

5. By resolution 44/34 of 4 December 1989, the United Nations General Assembly adopted and opened for signature and ratification the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. To enter into force, the Convention must be ratified by 22 Member States. To date only 16 States have done so with a further 10 States having signed, but not yet ratified. 3/ When the Special Rapporteur delivered his report to the Commission on Human Rights in 1996, the Convention had been ratified by only 9 States, with a further 12 signatories. While this is not rapid progress, there is clearly momentum behind the ratification process and extra work for the Special Rapporteur to ensure that questions about the Convention are answered and signatories solicited so that it enters into force. The delay in the Convention's entry into force can only encourage the continuation of this unlawful activity.

Recommendation

The Member States of the United Nations should ratify or accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries as soon as possible so that it can enter into force.

Persistence of mercenarism

6. The persistence of mercenary activity can, in part, be attributed to gaps and ambiguities within existing international legislation, in particular the definition that has been used for a mercenary in the relevant instruments and technical difficulties associated with their enforceability. These deficiencies have meant that international norms relating to mercenaries have not been sufficient to combat the growth of the phenomenon and perpetrators of these unlawful acts have been allowed to continue with relative impunity. The international community should therefore investigate the connection between the persistence of mercenary activities and the egregious gaps in relevant international instruments and seek ways to amend them in order to improve their effectiveness.

Recommendation

In accordance with earlier General Assembly resolutions, an expert meeting should be convened to study the question of mercenaries in greater depth and review and update international legislation in order to ensure greater legal clarity as to how the problem can be tackled.

Rationalization of the work of the Commission

7. During the fifty-fifth session of the Commission on Human Rights, delegates will meet to discuss the report which the Bureau of its fifty-fourth session compiled on the rationalization of the work of the Commission. 4/ International Alert welcomes the report as a means of improving the effectiveness of the Commission's mechanisms and the capacity of the United Nations to promote and protect internationally recognized human rights and contribute to preventing their violation. However, paragraph 20, Recommendation 1 (e), recommends that the Commission consider a proposal to "Terminate the mandate of the Special Rapporteur on the use of mercenaries and recommend that this matter be henceforth considered directly in the General Assembly (Sixth Committee)".

United Nations Special Rapporteur on the use of mercenaries

8. International Alert considers mercenaries an important human rights issue, which the Commission should continue to address. There is clearly further necessary work for the Special Rapporteur on the use of mercenaries to ensure that the International Convention mentioned above comes into force. Indeed, the Bureau's proposals are contrary to resolution 1998/6 of 27 March 1998, adopted by 35 votes to 9, with 8 abstentions 5/ in which the Commission extended the Special Rapporteur's mandate for a further three years. International Alert is concerned that if this matter is passed on to the General Assembly (Sixth Committee) it will not receive the attention that it deserves. The Bureau's report recognizes the importance of the special procedures of the Commission and the thematic mandates for fostering United Nations efforts to promote and protect internationally recognized human rights. It is important that the United Nations treatment of the mercenary problem remains within the remit of this branch of the Commission on Human Rights.

Recommendation

International Alert recommends that the Commission on Human Rights maintain the mandate of the Special Rapporteur on the use of mercenaries for at least the next three years and investigate ways to broaden the mandate.

Self-determination

9. Mercenarism threatens the exercise of the right to self-determination of peoples and undermines the territorial integrity of the State and internal law and order. By participating in foreign conflicts in the ultimate political outcome of which they have no stake, mercenaries make unlawful interventions in sovereign States in contravention of the established purposes and principles of the United Nations, specifically the non-resort to armed force set out under Article 2 (4) of the Charter of the United Nations. Allowing their continued presence (often on each side of a conflict) can only aggravate existing tensions, and protract and prolong conflicts. In addition, their presence causes harm to the security of those affected by undermining democratic procedures and the functioning of economies.

10. It is the responsibility of States to stop their citizens engaging in mercenary activity and leaving their territories to make unlawful interventions in foreign conflicts. This was emphasized in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, which declared that "every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursions into the territory of another State". 6/ There should be international jurisprudence for these obligations to be upheld. The introduction of such measures now would also be consistent with Governments' increasing vigilance with respect to the export of arms from their territories.

Recommendation

International Alert recommends that the Member States of the United Nations fulfil their obligations not to interfere in the affairs of other sovereign States by introducing legislation which characterizes mercenarism as a criminal offence and contains measures to prevent its citizens from leaving its territory to participate in foreign conflicts as mercenaries.

Human rights

11. Mercenaries are soldiers of fortune who are thought to commit human rights violations in contravention of internationally recognized human rights and humanitarian law. The reasons for these violations are many, including the monetary incentive attached to mercenaries' conduct in war, but also the fact that mercenaries occupy a grey area in international humanitarian law and do not have privileged status. Article 47 of Protocol I to the Geneva Conventions (1949) defines a mercenary 7/ and the status they are to be accorded in the rules of war. The article also provides that a mercenary as so defined "shall not have the right to be a combatant or a prisoner of war".

12. Because the definition in the article is overly narrow in that six components must be cumulatively met before an individual is deemed a mercenary, mercenaries do not consider themselves bound by, and therefore do not respect, the laws of war. Stripping mercenaries of the rights of a combatant and prisoner of war is furthermore not only against the established principle of humanitarian law, that all belligerents should be treated equally, but also makes them even less inclined to abide by their obligations as combatants since they cannot expect to benefit from the rights attached to that status. Not being accorded prisoner of war status has also been used as an excuse by captors of mercenaries for committing gross human rights violations against them.

13. Mercenaries have traditionally been used because of their perceived military expertise. Private security and military companies similarly offer to improve the military capability of their client's forces. The introduction of such overwhelming military potential, however, often provides the means to carry out highly ferocious and destructive acts of violence and can exacerbate already poor human rights situations and prevent the just and peaceful transformation of violent conflicts. In the same way as the introduction of weapons into conflict regions can fuel violence and lead to human rights violations, so the use of mercenaries in situations of violent conflict can have an equally adverse effect.

Recommendation

The Office of the High Commissioner for Human Rights should publicize the adverse effects of mercenary activity on human rights and render advisory services to States that are affected by them.

Links with criminal activities

14. Mercenaries have also been linked to illicit and criminal activities including drug-trafficking, arms-trafficking, illegal extraction of resources and even acts of international terrorism. 8/ These links demonstrate the multifaceted nature of the mercenary phenomenon and the reasons for it being dealt with accordingly by the United Nations system. There have been cases of mercenary groups involved in highly intricate arms trafficking deals and supply routes, some in breach of United Nations arms embargoes. This is something that has been recognized in the preamble to the draft United Nations protocol against the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, which forms part of the Convention on Transnational Organized Crime being prepared by the Commission on Crime Prevention and Criminal Justice and which includes mercenary groups in its remit. There is also evidence of mercenary involvement in acts of international terrorism. Mercenaries are hired by terrorist groups to carry out acts of deadly violence and indiscriminate terrorist attacks - in so doing becoming terrorists themselves - because of their expertise in explosives and technical devices. 9/

15. The Bureau's report is aimed at enhancing the Commission's mechanisms so as to improve the capacity of the United Nations to promote and protect internationally recognized human rights. In view of the above, a way of both rationalizing and strengthening the Commission's efforts to address the mercenary problem would therefore be to cultivate links with branches of the United Nations system dealing with criminal activities associated with mercenarism. Such an integrated and mutually enhancing approach to dealing with these interrelated problems would also widen United Nations jurisdiction over these issues.

Recommendation

The Commission should seek to work more closely with the Crime Prevention and Criminal Justice Division of the United Nations through, for instance, working and study groups, so as to tackle the issue of mercenarism as a matter of drug-trafficking, arms-trafficking, illegal extraction of resources and even acts of international terrorism.

Notes

1/ The Security Council and the General Assembly had passed resolutions condemning the use of mercenaries previously, but they were restricted to specific conflicts.

2/ General Assembly resolution 2465 (XXIII).

3/ The following 16 States have ratified the Convention: Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Mauritania, Saudi Arabia, Seychelles, Suriname, Togo, Turkmenistan, Ukraine and Uzbekistan. The following 10 States have signed but have yet to ratify the Convention: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay and Yugoslavia.

4/ E/CN.4/1999/104.

5/ The voting was as follows: In favour: Bangladesh; Bhutan; Botswana; Brazil; Cape Verde; Chile; China; Congo; Cuba; Democratic Republic of the Congo; Ecuador; El Salvador; Guatemala; Guinea; India; Indonesia; Madagascar; Malaysia; Mali; Mexico; Morocco; Mozambique; Nepal; Pakistan; Peru; Philippines; Russian Federation; Rwanda; Senegal; South Africa; Sri Lanka; Sudan; Uganda; Uruguay and Venezuela. Against: Austria; Canada; Denmark; Germany; Japan; Luxembourg; Poland; United Kingdom of Great Britain and Northern Ireland and United States of America. Abstaining: Argentina; Belarus; Czech Republic; France; Ireland; Italy; Republic of Korea and Ukraine. Tunisia later advised that, had it been present, it would have voted in favour of the draft resolution. Draft resolution was introduced by Cuba and was sponsored by Algeria, the Democratic Republic of the Congo; Egypt; Guinea; Mali; Swaziland and Uganda. Angola; Cameroon; Ethiopia; Ghana; India; Madagascar and Nigeria subsequently joined the sponsors. The representative of the United Kingdom requested the vote. Cuba requested the roll-call vote.

6/ General Assembly resolution 2625 (XXV) of 24 October 1970. The resolution was adopted without a vote.

7/ A mercenary is any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain ...; (d) is neither a national of a party to the conflict nor a resident of a territory controlled by a party to the conflict; (e) is not a member of the armed forces of a party to the conflict; (f) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces. This is also the definition used in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

8/ See "Use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination", Note by the Secretary-General (A/53/338).

9/ Ibid.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/118
30 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Agenda item 10

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 March 1999]

GE.99-11800 (E)

1. International Educational Development/Humanitarian Law Project, in coalition with the National Network of Civilian Human Rights Organizations "All Rights for All" which encompasses 46 Mexican organizations, wish to express their concerns about the situation of economic, social and cultural rights.

2. In many countries, the steps necessary to progressively arrive at the full enjoyment of the rights recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR) have not been taken. Rather, Governments have prioritized the interests of national and transnational capital over the welfare of the general population. In Mexico, for instance, years of structural adjustment policies have aggravated the problems of poverty, marginalization, discrimination and inequality. The budget allocations for health, education and rural development have been consistently reduced, while enormous resources have been channelled into a banking rescue package and the militarization of certain regions.

3. One result of the free-market-economy policies that are currently being pursued in many parts of the world is an increase in the gap between rich and poor. For example, in Mexico, 60 per cent of the country's GNP is used by 8.6 million Mexicans, a mere 10 per cent of the population. Conversely, 10 per cent of the country's annual revenue is shared among 59 million people, or 60 per cent of the population. Official statistics indicate that in 1996 there were 42 million people living below the poverty line in Mexico (46 per cent of the population) and 22 million people live in conditions of extreme poverty.

4. The priority given to macroeconomic indicators has been at the expense of wage levels and conditions of employment. In Mexico, the minimum wage covers less than 40 per cent of the cost of the basic food package, and continues to deteriorate. The Mexican Government has attempted to guarantee workers' buying power through insignificant raises in the minimum wage which are disproportionate to the rising costs of basic foodstuffs: in 1997 the minimum wage was 7.76 pesos (US$ 0.78) and the official cost of the basic food package was set at 36.37 pesos (US$ 3.63); by April 1998, the minimum wage was 30.29 pesos (US$ 3.03) and the basic food package 281.30 pesos (US$ 28.10). This represents a real drop in purchasing power of 48 per cent.

5. The situation of workers has been made worse by policies which, to a greater or lesser extent, have privatized conditions of work, pensions and credit opportunities, thereby freeing the Governments of Member States from the responsibility of intervening when rights are violated. In Mexico, in 1996, three legislative reforms were debated - and adopted one year later - which limit the rights, consecrated in the ICESCR, to social security, housing and adequate labour conditions.

6. Turning to the right to education, there are fundamental problems to overcome regarding insufficient and poor-quality service, low literacy rates for women, and the enormous differences in levels of education which exist between regions. In the State of Michoacán, Mexico, the illiteracy level is 47 per cent higher than the national average (which is 12 per cent, and up to 46 per cent for the indigenous population); in the State of Veracruz it is 54 per cent higher, and in states such as Oaxaca 81 per cent higher.

Within such states, there are zones where illiteracy is four times the national average (Tuxtepec) or 3.6 times (Mixtepec). In Oaxaca, the number of children enrolled in school is 25 per cent less than the national average, and in Michoacán it is 12.5 per cent less.

7. The health and nutrition sectors, like education, have been affected by the policy of reducing the welfare budget. In Mexico, the budget for social programmes, including education and health, was reduced by 29,777 million pesos (US$ 2,977 million) in June 1998. There are important regional disparities in terms of access to medical services. In Chiapas, 80 per cent of the population (over 3 million people) lack access to social services, and of these 450,000 do not have regular access to health services. This situation is reflected in the fact that during 1998, in Chiapas alone, 2,027 cases of malaria were reported. Health problems are compounded by malnutrition. As UNICEF has recognized, Mexico does not have a well-defined strategy to address the problem of malnutrition. In this country 350 people die of starvation each day, the majority of whom are children under five. According to UNICEF, of the 2 million children who are born each year in Mexico, 158,000 die, and 40,000 of these deaths are related to malnutrition.

8. The discrimination that ethnic minorities suffer continues to pose a major obstacle to compliance with the ICESCR. Indigenous people in Mexico are not on an equal footing with the rest of the population in terms of benefiting from basic services provided by the State. Many indigenous communities live in deplorable conditions of poverty with little or no access to social or health services. In this vein, according to official figures, indigenous municipalities comprise 48 per cent of those described as suffering a "high degree of poverty" (although they represent only one third of the municipalities in the country as a whole). Turning to housing, only 32 per cent of predominantly indigenous localities have running water and only 10 per cent have sewage systems. Eight of every 10 indigenous homes do not even have a corrugated iron roof and have only dirt floors. Indigenous women suffer the greatest degree of marginalization, reporting the highest rates of illiteracy, malnutrition and health problems.

9. This situation has developed in spite of the fact that inhabitants in predominantly indigenous localities are the owners of their land and houses. However, as indigenous people lose access to land ownership, as the effects of the reforms to article 27 of the Mexican Constitution become more entrenched, living conditions amongst indigenous communities are poised for a downturn. The reform challenges the communal nature of indigenous lands, engendering an individualistic attitude towards land ownership and providing for communal lands to be acquired commercially. This renders indigenous communities vulnerable to exploitation and further impoverishment as their land, their lifeline, is lost.

10. The problem of displaced persons due to internal and international conflicts continues unabated in many parts of the world. In Mexico, this has reached new proportions in recent years due to the presence of paramilitary groups as part of the low-intensity-war strategy, political persecution, and intimidation and harassment by police and military officers. In the States of Guerrero, Oaxaca and Chiapas, the majority of displaced are indigenous people

and campesinos who are currently subsisting in inhumane conditions. In the State of Chiapas alone, approximately 20,000 people have been displaced since the start of the armed conflict.

11. The omissions that characterize official policy towards the displaced become more marked when seen in the context of the military budget for the region. In Chiapas, it is estimated that 200 million pesos (US$ 20 million) are being spent monthly on soldiers' wages. This does not include food, vehicles or weapons. In such conditions, economic, social and cultural rights cannot be said to be respected. The situation in Chiapas is merely symbolic of the human rights violations which are widespread throughout the country.

12. In recognition of the declarations by the Commission on Human Rights reaffirming the universal nature of human rights, and of the deterioration of the economic, social and cultural conditions in which the poorest communities live, we call on the international community to promote concrete reforms to improve the quality of life for the most marginalized of our society.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/119
30 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Agenda items 9 and 10

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by International Education Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 March 1999]

Sanctions against Iraq: Human rights and humanitarian law considerations

1. International Educational Development/Humanitarian Law Project has been deeply concerned for a number of years about the extreme consequences on human rights, especially the right to life, the right to food and the right to health, due to the sanctions regime imposed on Iraq.

2. We first raised our concerns to the Commission at its fifty-second session (1996) in conjunction with Mrs. Margarita Papandreou and Women for Mutual Security, and with Italy-based Bridges to Baghdad. At that session we cited numerous reports by United Nations bodies on the starvation and near starvation of hundreds of thousands of Iraqi women and children and the acute suffering of all Iraqis. We noted the extreme shortages of even the most basic medicines. We noted the near catastrophe from the effects of weaponry containing depleted uranium used by United States forces: dramatically higher rates of birth defects, alarming cancer rates in small children and other medical sequelae of exposure to radiation from depleted uranium. We expressed deep concern about the operation of the Sanctions Committee and its seeming violation of the basic principles of humanitarian law mandating the free circulation of goods necessary for the survival of the civilian population. Now, three years later, the sanctions are still in force.

3. In August 1998 we circulated a document on sanctions and human rights (E/CN.4/Sub.2/1998/NGO/24) at the fiftieth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in response to Sub-Commission resolution 1997/35. 1/ Our document sets out provisions of international law, especially human rights and humanitarian law, relevant to the issue of sanctions and provides a country-by-country review of sanctions regimes currently imposed. The situation in Iraq is by far the gravest of any country with internationally, regionally or unilaterally imposed sanctions.

4. Because of the alarming conditions in Iraq we decided to undertake a review of the situation from the onset of the Gulf war to the present. The findings of our review are set out in "The Case against the United States: Violations of International Law, Including War Crimes, Genocide and Crimes against Humanity in its Actions against the Territory and People of Iraq" (IED/HLP 1999), available to members of the Commission. We concluded that the United States: (a) carried out military operations beyond the scope of the authorizing Security Council resolutions; (b) carried out military operations against retreating soldiers and civilians; (c) carried out military operations against civilian targets; 2/ (d) carried out military operations after the aims of the war had been achieved; (e) used illegal and inhumane weapons such as weaponry containing depleted uranium; (f) failed to come to the aid of victims or even to allow others to come to their aid; (g) illegally utilizes United Nations work in Iraq, including UNSCOM and other field operations; (h) exercises undue control and influence over the Sanctions Committee to the severe detriment of the free flow of humanitarian goods; and (i) carries out continuous military cperations against military and non-military targets in Iraq with no United Nations mandate.

5. We concluded that the definition of genocide was met by the wilful killing and the callous and wanton disregard on the part of the United States for the lives and survival of the Iraqi people and by the use of weaponry affecting generations to come by causing birth defects, sterility and other conditions.

6. We found the control exercised by the United States over the Sanctions Committee especially disturbing. In that regard the findings of the Department of Humanitarian Affairs of the Secretariat are most revealing: in expressing concern over the way humanitarian exceptions were handled by the Committee (the "application delays"), it found that by mid-1997 only one half of the applications had been approved. It also found that the Committee still met behind closed doors. 3/ In 1999 the situation is little better.

7. In addition to blocking urgently needed direct food and medical aid, the United States has also prevented the supply of or destroyed veterinary supplies and agricultural seeds, fertilizer and pesticides. One result has been a recurrence of hoof and mouth disease, which had been eradicated in Iraq due to an intensive immunization programme. Another result is poor crops or no crops at all, thereby preventing Iraqis from meeting their own subsidence needs.

8. An especially disturbing situation is the emergence of the screw-worm fly in Iraq. This insect is deadly to cattle and can kill weakened people and small children. Never known above the 30th parallel, it suddenly appeared near Baghdad and began spreading. Supplies to treat people and cattle and to control this fly were not allowed. In addition to ensuring immediate provision of such goods, the international community should investigate how the screw-worm fly came to be in Iraq at all.

9. In examining the near hysteria of the United States over efforts to lift sanctions in Iraq, we can only conclude that the United States seeks to cover up or deflect attention from its own violations of the laws and customs of war during the Gulf war. We conclude that the need to cover up the real effects of depleted uranium might be especially important. By creating a climate of hostility towards the Iraqi people, by maintaining sanctions, and by attempts to criminalize aid efforts actually allowed under humanitarian law, the United States has effectively created a "chilling effect" on normal human rights investigations and relief operations. Human rights organizations are scared away or actually prevented from going to Iraq to assess the situation. Equally important, human rights organizations are unable to contact victims who might wish to present a claim under human rights or humanitarian law. Iraq is the only country in the world where conditions imposed from without make it nearly impossible to carry out normal human rights work.

10. The Commission can and should address the adverse effects of the sanctions on Iraq as a matter of the greatest urgency. First, the Commission should request the Security Council to end all sanctions relating to food, medicine and other items needed for the survival of the Iraqi people, its livestock and its agriculture. We also urge an end to sanctions on travel to and from Iraq so as to facilitate the rapid provision of humanitarian aid, the medical evacuation of persons in need of emergency medical care elsewhere, and easier access for human rights and humanitarian organizations.

11. We also urge the Commission to address the issue of racism and xenophobia in conjunction with the situation in Iraq and the sanctions. Our organization is convinced that the negative campaign carried out against Iraq by the United States in order to continue the sanctions has led to generalized hatred of the Iraqi people and indifference to their plight.

12. We urge the High Commissioner to exercise her good offices to end sanctions on essential civilian goods and travel. Additionally, we urge her to undertake a study of the effects of sanctions in Iraq on the realization of human rights. In our view, even when sanctions are lifted, there will still be a compelling need to assess what they did to the Iraqi people.

Notes

1/ The Sub-Commission, in its decision 1998/112 of 26 August 1998, decided to continue consideration of this topic.

2/ Most credible sources attest that up to 60 per cent of the civilian casualties in the Gulf war were Iraqi children. In our report we cited the Red Crescent (Jordan) and others in this regard. We also noted unnecessary military operations against Iraqi soldiers, quoting one American officer who called the war a "turkey shoot" (United States pilot Colonel Richard White, quoted in The Independent (London), 6 February 1991).

3/ Although the serious effects on the Iraqi people were known before the military operations in the Gulf war started, by July 1991 the situation was already grave. As reported by the inter-agency mission headed by Sadruddin Aga Khan: "Innocent civilians", and above all the most vulnerable, "should not be held hostage to events beyond their control. ... It is clearly imperative that Iraq's essential civilian needs be met urgently" (S/22799, annex).

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/120
7 April 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Agenda item 11 (g)

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement submitted by the Transnational Radical Party, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 April 1999]

GE.99-11947 (E)

1. The right of conscientious objection to military service as a fundamental human right is recognized and guaranteed on the international level, in particular by the United Nations Human Rights Committee (General Commitment No. 22 (48) 1993), the Commission on Human Rights (resolution 1995/83 of 8 March 1995), the Organization on Security and Cooperation in Europe (Document of the Copenhagen Meeting on the Human Dimension of 29 June 1990), the Council of Europe (recommendation No. R (87) 8 of the Council of Ministers of 9 April 1987; Rodota report adopted by the Parliamentary Assembly of the Council of Europe (document 6752 of 29 January 1993), the European Parliament (resolutions of 13 October 1989 and 11 March 1993; recommendation of 18 January 1994).

2. In the Russian Federation the right to conscientious objection is guaranteed by the Constitution adopted on 12 December 1993: "A citizen of the Russian Federation whose convictions and faith are at odds with military service and also in other cases stipulated by the federal law shall have the right to the substitution of an alternative civil service for military service" (art. 59.3). According to the current federal law "On military conscription and military service", all men between 18 and 27 who do not have any reason for exemption are subject to obligatory military service. The federal law "On alternative civil service", the draft of which was adopted by the State Duma at first reading in December 1994, was rejected at second reading on 7 October 1998 and has still not been approved. Therefore, there exists no legal procedure for granting alternative civilian service for conscientious objectors. Adopting and introducing such a law was among the obligations assumed by the Russian Federation on joining the Council of Europe in February 1996.

3. At the same time, according to its article 15, "The Constitution of the Russian Federation shall have supreme legal force and direct effect, and shall be applicable throughout the entire territory of the Russian Federation." Therefore, the right to conscientious objection guaranteed by the Constitution represents, from the juridical point of view, an inalienable right of citizens even in the absence of a special federal law on alternative civilian service.

4. In practice, the citizen's right to conscientious objection is being widely contested by military commissariats (territorial bodies of the Defence Ministry responsible for military call-up) and by recruitment commissions formed by local civil authorities twice a year for the period of conscription campaigns. In violation of the Constitution, recruitment commissions take decisions to recruit conscientious objectors. Conscientious objectors whose rights have been violated in this way may appeal to the courts against these decisions. However, the courts judge mostly in favour of the recruitment commissions and against the conscientious objectors, deciding not on the basis of the constitutional norms but on the traditional idea of military serving being a "holy duty of every genuine man". Such anti-constitutional decisions are taken by courts of various levels, including the Supreme Court of the Russian Federation. Thus, on 23 November 1997, Alexey Antropov from the Republic of Kabardino-Balkaria received the answer to his appeal from the Supreme Court, which stated that the respective norm of the Constitution has no direct implementation in the absence of a federal law on alternative civilian service. In other cases, the courts explain their negative decisions

by stating that the applicant "did not manage to prove his convictions in an appropriate way", although article 29.3 of Russian Constitution states clearly: "No one may be coerced into expressing one's views and convictions or into renouncing them."

5. According to article 25 of the federal law "On military conscription and military service", in case of appeal to the courts against a decision of a recruitment commission, the implementation of the latter's decision should be suspended until the last instance court has decided on the matter. In the majority of cases, however, military commissariats act on an illegal basis, violating the law: assisted by the militia, they bring, by force and intimidation, conscientious objectors who are awaiting a court's decision on their appeal to barracks.

6. The exact number of conscientious objectors in Russia is unknown, but it is sure that there are thousands of them. According to information from the General Staff of the Defence Ministry of the Russian Federation, during the autumn 1997 conscription campaign alone (October-December 1997) there were 1,061 formal declarations of conscientious objection submitted to the recruitment commissions.

7. Since 1996, military commissariats act on the basis of a secret directive of the Defence Ministry, which prescribes that the military commissariats accept declarations of conscientious and send conscientious objectors to serve in units where the service does not involve "holding and using arms", giving them a written guarantee if necessary. From the juridical point of view, however, this directive does not solve the problem of conscientious objection, because military service in any unit assumes taking an obligatory military oath, obeying orders and undergoing military training. In practice, the conscripts who agree to be dispatched to such units find themselves doing military service in so-called "construction battalions" in conditions much worse than in any other military service, subjected to torture and ill-treatment. However, the applicants do not always find themselves exactly in the units where they have supposedly been sent by the recruitment commission.

8. In many cases conscientious objectors have been criminally prosecuted under article 328 of the Criminal Code of the Russian Federation ("evading military or alternative civilian service"). This happens in spite of the Constitutional Court's decision of 22 May 1996 which states that conscientious objection declared by a draftee according to the Constitution does not constitute a crime under article 328.

9. Vadim Gesse (Noginsk, Moscow region) declared in December 1995 to the recruitment commission his intention to perform alternative civilian service. Nevertheless, he received an order to join the army. After he did not appear at the recruitment point, on 25 January 1996 he was arrested, spent 40 days in prison, and was released only after interventions by Amnesty International, the Transnational Radical Party and a press campaign. On 13 May 1996 he was fully acquitted by the City Court of Noginsk.

10. Alexander Seregin, a Hare Krishna believer from Moscow, declared his conscientious objection to the recruitment commission in spring 1996, demanding the alternative civilian service. After he did not report to the recruitment point, a criminal lawsuit was filed against him. On 24 October 1996, the Cheremushkinsky Inter-municipal Court of Moscow sentenced him conditionally to two years in prison. However, on 24 December 1996, Moscow City Court quashed this sentence and acquitted Alexander Seregin.

11. On 4 April 1997, the Tushinsky Inter-municipal Court of Moscow refused the appeal of Vasily Bazhenov against a recruitment commission which had ignored his conscientious objection and decided to send him to the army. On 2 June 1997, Moscow City Court confirmed the Tushinsky Court's decision. Since Bazhenov continued to insist on his constitutional right to conscientious objection, on 5 January 1998, the Tushinsky prosecutor filed a criminal lawsuit against him under article 328 of the Criminal Code. Vasily Bazhenov is currently awaiting trial.

12. On 27 February 1998 Alexander Borodin, accused under article 328 of the Criminal Code of "evading military service", was sentenced by the Golovinsky Inter-municipal Court of Moscow to a fine of 1,000 roubles (about 2,800 US dollars) for his conscientious objection.

13. Igor Smorodin (Sterlitamak, Republic of Bashkortostan) requested the recruitment commission in December 1996 substitution of military service by alternative civilian service. He did not obtain any answer and appealed to the court. The lawsuit has not yet been examined. On 5 November 1997, before any court decision on the matter, the recruitment commission took a new decision to send Smorodin to military service. On 21 November 1997, the City Court of Sterlitamak decided to reject Smorodin's appeal in absentia; the court did not even informed Igor Smorodin that his case was going to be discussed. On 22 December 1997, Igor Smorodin was informed about the criminal lawsuit against him on the charge of "evading military service" (art. 328 of the Criminal Code). On 3 February 1998, he was arrested and put in prison where he faced pressure and intimidation to force him to serve in the military. On 6 February 1998, he was released, but the criminal case against him was closed only in May 1998.

14. In Novosibirsk at least two other conscientious objectors were sentenced in 1997 to fines for "evading military service".

15. In April 1998 in Moscow, Alexey Bykov was accused of "evading from military service". His criminal case was closed at the end of December 1998, after several court sessions.

16. Vadim Nazarov, a Jehovah's Witness from Sochi (Krasnodar territory), was arrested for his conscientious objection on 29 April 1998. On 28 July he was sentenced by the Central District Court of Sochi to one year of prison camp under article 328. This sentence was quashed on 9 September 1998 by the Krasnodar Territorial Court and Vadim Nazarov has been released after four and a half months in jail.

17. On 21 October 1998 Sergej Sarychev was sentenced conditionally for conscientious objection by Golovinsky Inter-municipal Court of Moscow to six months of imprisonment and amnestied.

18. It is necessary to anticipate, however, that in reality the number of sentenced and/or imprisoned conscientious objectors could be much higher. It is therefore necessary to stress that serious and systematic violations of the fundamental right to conscientious objection are committed by the authorities of the Russian Federation against thousands of young Russian citizens. This is a flagrant violation both of the international obligations of the Russian Federation and its own Constitution.

19. The Transnational Radical Party appreciates the attention paid by the Commission on Human Rights to violations of the right to conscientious objection in the Russian Federation. We believe that the Commission should recommend that the General Assembly and the Secretary-General take urgent action to put an end to the violations of this fundamental right in the Russian Federation. We therefore call upon the Commission to adopt a strong resolution on conscientious objection at the present session.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/121
7 April 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Agenda item 5

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by International Educational Development, Inc. a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 April 1999]

GE.99-12000 (E)

Self-determination in territories under Indonesian control

Background

1. International Educational Development has been monitoring the situation in Indonesia, especially since President Suharto resigned in May 1998 after mass protests and rioting against his Government. New President B. J. Habibie began a period of partial reform and investigation into abuses of the Indonesian regime. Elections are now planned for 8 June 1999. Areas under Indonesian rule that had long claimed the right to self-determination have begun new initiatives with the aim of realizing their independence. At the same time, these areas are engulfed in civil unrest and communal violence. This statement presents the situation in three of these areas: East Timor, the Moluccas and Acheh.

East Timor

2. East Timor was a Portuguese colony for over 300 years. In 1975, as Portugal was preparing to grant independence to East Timor, the Indonesian army invaded and, in 1976, annexed it. The United Nations never recognized Indonesian sovereignty over East Timor. Until the resignation of Suharto, there was continuous armed conflict between the Timorese National Liberation Front (FRETILIN) and Indonesian forces. In addition to widespread violations of humanitarian law, the Indonesian authorities brutally oppressed the Timorese (murders, torture, arbitrary arrests and the like) documented in numerous reports of the Commission's rapporteurs and working groups and numerous non-governmental organizations. Indonesia also began a large programme of settling Javanese people in East Timor.

3. Shortly after taking control of the Government, President Habibie, in conjunction with United Nations mediator Jamsheed Marker, began discussions with the leadership of East Timor while releasing some Timorese political prisoners. In January 1999, the detention of Timorese leader Jose Gusmao (Xanana) was changed to "special detention" in a house. Indonesia stopped sending settlers to East Timor. On 27 January 1999, President Habibie announced that the Government of Indonesia would consider giving East Timor its independence if its proposal for "special autonomy" was rejected in a special referendum. At present there are continuing clashes between pro- and anti-independence factions in East Timor, with the Javanese settlers forming the majority of persons on the island favouring Indonesian rule.

The Moluccas (Republik Malukul

4. The Moluccas, independent for much of its long history, was part of the Netherlands East Indies. At the conclusion of the Netherlands' colonial empire in the area, the considerable unrest throughout the Netherlands East Indies prompted the United Nations to establish the Security Council Committee of Good Offices (1947-1949) and then the Security Council Commission for Indonesia (1949-1955). A key concern of the Netherlands and the United Nations was the fate of the formerly independent components of the Dutch Empire. After several preliminary agreements - the Linggadjati Agreement of 25 March 1947 and the Renville Agreement of 1948 are the major ones - the Netherlands, the Javanese leadership and the United Nations

approved the Round Table Conference Agreements in November 1949 (69 U.N.T.S.3). Article 2 of the Third Agreement (Transitional Measures) gives the component parts of what was to be the new nation of Indonesia the right to "opt out", first by providing for a plebiscite to determine if a region wanted to form a separate component state (paragraph 1) and second by providing for the right to negotiate for separate status (paragraph 2).

5. The Moluccas "opted out" in 1950, declaring the Republik Maluku Selatan. In July and September of that year, Javanese forces invaded the Moluccas and militarily annexed it. The Moluccan people resisted and formed armed units to try to repel the Javanese. Throughout the 1950s and 1960s there was widespread unrest. In 1966 the Moluccan leader, Chris Soumokil, was captured and summarily executed.

6. The Indonesian authorities began large-scale settlement programmes that continue today. The clashes between Moluccan defenders and Indonesian forces have continued, although sporadically. Many Moluccans have fled the islands seeking asylum from the oppressive Javanese regime. Well-documented abuses have included sterilization of Moluccan girls and women, detention, torture and summary executions. The past few years have been exceptionally difficult for the Moluccans.

7. The Moluccan people actively work for the realization of self-determination both in the Moluccas and abroad: they have formed provisional governments and have developed international representation. Although the Habibie Government is now negotiating the status of East Timor, there have been no discussions about the component parts, such as the Moluccas, that exercised their right to "opt out" only to be brutally overrun and oppressed. In fact, since Habibie assumed the Presidency the situation in the Moluccas has deteriorated dramatically and the issue of self-determination has been ignored.

8. Current violence in the Moluccas involves clashes between the Javanese settlers and the Moluccan people which most observers claim are instigated by the Indonesian authorities to stifle any discussion of self-rule in the Moluccas and to affect the June elections. Human rights organizations such as Mena Muria Foundation and others attest that the Moluccans and the "transmigrants" have lived in relative peace for many years, in spite of the aims of the Moluccans for self-rule. Recently, the Indonesian authorities have been breaking apart that peace by granting Javanese better jobs and giving them lands seized from Moluccans. More disturbingly, there is a pattern of attacks on places of worship to exacerbate the communal violence: to date nine Moluccan Christian churches and six mosques have been destroyed, allegedly by provocateurs. Christian houses in eight villages have been burned down. Women and children have been brutally attacked. This current violence, which started in Ambon, has now spread to many other areas in the south and south-east of the islands. More than 100 are believed dead: the Mena Muria Foundation alone has registered 70 deaths in the past several months.

Acheh

9. In 1873 the Netherlands issued a formal declaration of war and began an invasion of the kingdom of Acheh in the northern part of Sumatra. The Achenese resisted and in 1942 the Dutch finally abandoned the attempt. Although never a component part of the Netherlands East Indies, Acheh was considered to be bound by the Round Table Conference Agreements and therefore able to "opt out" of the new country of Indonesia. However, the Javanese forcibly annexed Acheh shortly after gaining independence from the Netherlands. Resistance to Javanese/Indonesian rule has been a feature of Acheh for the past 50 years.

10. In 1976 the Acheh-Sumatra National Liberation Front (Acheh Merdeka - Free Acheh) was founded as an armed resistance group under the leadership of Tengku Hasan M. di Tiro, who has been in exile for many years. In the long struggle against the Indonesian forces, the people of Acheh have lost as many as 50,000 with 100,000 wounded. Many thousands have disappeared with a recent estimate put at 40,000 in the past nine years alone. In August 1998, President Habibie ordered the removal of Indonesian combat troops from Acheh and the military commander issued a formal apology for the atrocities carried out in Acheh. A special commission authorized to investigate human rights violations in all of Indonesia reported at least nine mass grave sites in Acheh. At present, there is much violence in Acheh with civilians retaliating against soldiers for atrocities and soldiers fighting back.

Conclusion

11. The situation in the Moluccas, Acheh and East Timor cannot be resolved without addressing the underlying and very strong claim to self-determination by the people and their leadership in these three areas. The United Nations system as a whole and the Commission in particular must undertake serious study of the whole question of the former Dutch and Portuguese colonies in the area and the intentions set out in the Round Table Conference Agreements and other relevant international instruments. Failure to respond with full respect for the principle of self-determination will doom the area to even longer armed conflict and the tragic loss of more lives. Accordingly, International Educational Development strongly urges the Commission to appoint a special representative to monitor the election process in Indonesia and to protect the self-determination rights of the people of East Timor, the Moluccas and Acheh.